

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA**

L.H. Jr.)	
Plaintiff,)	
)	
v.)	CAUSE NO.: 3:07-CV-300-TS
)	
MICHAEL J. ASTRUE, Commissioner)	
of Social Security,)	
Defendant.)	

ORDER

This matter is before the Court regarding the Plaintiff's Application for Attorney Fees Under the Equal Access to Justice Act [DE 20]. As a result of this Court's Order reversing the Commissioner's decision and remanding the case for further administrative proceedings, the Plaintiff asks the Court to award him \$6,677.63 in attorney's fees pursuant to 28 U.S.C. § 2412. In support of this Motion, the Plaintiff has submitted an Affidavit [DE 20-2] from his attorney, Patrick H. Mulvany, attesting to the attorney's fees incurred during this case, and the Attorney Fee Agreement [DE 20-3] that governed Mulvany's representation. The Defendant opposed the Application on grounds that his position was substantially justified. In the alternative, he requested that the Court reduce the fee request because it is unreasonable. On March 31, 2009, the Court referred the Application and brief in opposition to the magistrate judge for a Report and Recommendation. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

On June 17, 2010, Magistrate Judge Christopher A. Nuechterlein issued a Report and Recommendation, concluding that L.H. has established that he was a prevailing party and that the fees he requests are reasonable. The Magistrate Judge reasoned that the Defendant's position lacked substantial justification because the ALJ's conclusions were both insufficiently articulated and factually unsupported. In addition, the ALJ erred in his listing determination, in

the weight he afforded the opinions of L.H.'s treating physicians, and in his credibility finding. Regarding the reasonableness of fees, the Magistrate Judge considered comparable disability appeal cases, the complexity of the case in relation to the hours expended, and the reasonableness of the billing rate.

This Court's review is governed by 28 U.S.C. § 636(b)(1)(C), which provides in part:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

The statute requires that objections to the Magistrate's Judge's Report and Recommendations be made within fourteen days of service of a copy of the Report. *Id.* § 636(b)(1)(C). The Defendant has not filed objections to the Report and Recommendation.

Being duly advised that L.H. is the prevailing party and that the fees he requests are reasonable, the Court ACCEPTS the Report and Recommendation [DE 25], and GRANTS the Plaintiff's Application for Attorney's Fees Under the Equal Access to Justice Act [DE 20]. The Defendant is ORDERED to pay to the Plaintiff \$6,677,63 in fees.

SO ORDERED on July 7, 2010.

S/ Theresa L. Springmann
THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT
FORT WAYNE DIVISION